

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of

Numbering Resource Optimization

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CC Docket No. 99-200

To The Commission:

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JUL 27 2000

PETITION FOR TEMPORARY WAIVER OF
47 C.F.R. §§ 52.15(f)(6)(i)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

KMC Telecom Inc. ("KMC"), pursuant to 47 C.F.R. § 1.3, hereby petitions the Federal Communications Commission ("FCC") for an immediate temporary waiver until November 1, 2000 of 47 C.F.R. § 52.15(f)(6)(i), which requires carriers to file FCC Form 502 on August 1, 2000,¹

As an initial matter, KMC fully supports the Motion for Extension of Time filed on July 14, 2000 in the above-captioned docket by the Association for Local Telecommunications Services ("ALTS"), Competitive Telecommunications Association ("CompTel") and Personal Communications Industry Association, because the public interest would be served by a 90-day extension of the filing deadline for FCC Form 502. In addition to the grounds that support grant of a 90-day extension to all carriers, however, unique circumstances support the immediate grant of a 90-day waiver to KMC itself. Grant of the requested waiver will serve the public interest because KMC needs a minimum of an additional 90 days to complete the procedures necessary to file a complete and accurate FCC Form 502. Moreover, grant of the requested waiver will not undermine the

¹ This rule was adopted in the *Report and Order* in the above-captioned proceeding. *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000) ("*Report and Order*").

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policies served by the rules themselves, because the additional 90 days will speed the availability of reliable numbering utilization data upon which the FCC, the NANPA and the states can rely.

The FCC has the discretion to waive application of any of its rules for good cause shown pursuant to 47 C.F.R. § 1.3. As the courts have observed, an “agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”² A safety valve procedure is necessary because application of a general rule may not be in the public interest if extended to a party whose proposal “will not undermine the policy, served by the rule, that has been adjudged in the public interest.”³ Accordingly, the FCC “must take a ‘hard look’ at applications for waiver and must consider all relevant factors.”⁴

I. KMC REQUESTS A TEMPORARY WAIVER OF THE FILING DEADLINE FOR FCC FORM 502 UNTIL NOVEMBER 1, 2000

In the *Report and Order*, the Commission adopted rules that require carriers to report numbering forecast and utilization data on a semi-annual basis, beginning no later than August 1, 2000.⁵ These new rules require carriers for the first time to track and report six categories of numbering utilization: Assigned, Intermediate, Reserved, Aging, Administrative, and Available Numbers.⁶ On June 14, 2000, the FCC released FCC Form 502, which carriers must use to submit

² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

³ *Id.*

⁴ *Part 68 Waiver Requests of Telephone Equipment Supply, Inc., Casio Communications, Inc., Tandy Corporation, Atlinks USA, Inc., Matsushita Electric Corporation of America, Vtech Communications Limited, Cidco Incorporated, Atlinks USA, Inc., Atlinks USA, Inc.*, 2000 FCC LEXIS 2702 (May 23, 2000).

⁵ *Report and Order* at ¶ 67.

⁶ *Id.* at ¶ 14 *et. seq.*

the required forecast and utilization data. FCC Form 502 was further modified on June 29, 2000 and July 14, 2000.

In adopting the six new primary categories of numbering utilization, the FCC assumed that “[t]he direct cost of implementing uniform definitions requires little more than rearranging existing terms of individual definitions into standardized definitions.”⁷ This assumption is not true for KMC. Implementation of the new rules has been very costly and, perhaps more importantly for the purposes of this waiver request, time consuming. KMC has been forced to reconcile its entire inventory of telephone numbers in order to determine how each individual number should be categorized. This reconciliation of records is necessary because the six new primary categories and definitions of number use are not consistent with the industry guidelines that were in place before the FCC adopted the *Report and Order*. KMC must perform this review and reclassification manually; this procedure is highly labor intensive and very time consuming, and cannot be completed before August 1, 2000.

Accurate and complete data on numbering utilization is crucial because the FCC will rely on this data to adopt further optimization measures in this proceeding and the NANPA will rely on this data to reach valid conclusions about area code exhaust. In fact, the fundamental purpose for adopting uniform, national definitions for categories of usage was to provide the FCC and NANPA with accurate utilization data.⁸ KMC submits that good cause exists for a temporary waiver of 47 C.F.R. § 52.15(f)(6)(i) until November 1, 2000 so that KMC will be able to submit accurate and complete numbering utilization data. The requested relief is therefore in the public interest.

⁷ *Id.* at ¶ 12, n.25.

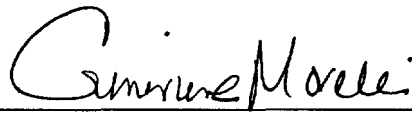
⁸ As the Commission noted, it codified the six primary definitions in the first instance in furtherance of its overall goal of “improv[ing] the accuracy of utilization data reporting.” *Id.* at ¶ 14.

CONCLUSION

For the foregoing reasons, KMC respectfully requests that the FCC grant it a temporary waiver of 47 C.F.R. § 52.15(f)(6)(i) until November 1, 2000.

Respectfully submitted,

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July 27, 2000

CERTIFICATE OF SERVICE

I, Denise Milligan, hereby certify that on this 27th day of July, 2000, I have caused a copy of the foregoing "Petition for Temporary Waiver of 47 C.F.R. §§ 52.15(f)(6)(i) of Intermedia Communications Inc." to be hand delivered to the following:

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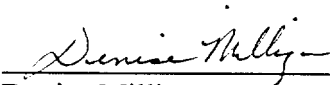
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